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BOOK REVIEWS.

Die Verfassung des Deutschen Reichs mit Erläuterungen. Von DR. LUDWIG DAMBITSCH, Amtsrichtdr. (Berlin: Verlag von Franz Vahlen, 1910. Pp. 696.)

The treatises on German constitutional law, both general and monographic, increase apace. The field makes a strong appeal to the German fondness for academic and theoretical disputation, for fine-spun arguments and subtle distinctions. German constitutional law is now passing through the stage which American constitutional law occupied before the civil war,—a period in which the innumerable details of governmental relations in a federal state with a complex system of balanced powers are threshed out in the form of argumentative discussions. This structural, anatomical study of government must always take precedence; but there comes a time—and in America we have reached it—when it becomes necessary to supplement it by a physiological and a morphological treatment. Constitutional law must include something more than a mere exposition or commentary on the clauses of a written fundamental law. The conventional and dynamic aspects of government are equally important. These phases of the subject, moreover, cannot be left to separate treatises. Unless the study of the strictly legal side of constitutional law be informed and enlivened by constant reference to the actual working of institutions and their transformation under the influence of historical forces it is certain to eventually degenerate into the veriest scholastic emptiness. There is possibly some danger of this at present in Germany. There can be no doubt that a Bryce's *American Commonwealth* for Germany would be a great boon.

The treatise under review, a substantial octavo volume of nearly seven hundred pages, cannot be said to mark a great advance over its predecessors in giving a vital and intimate view of the actual functioning of the German government. It is what its title implies, a commentary on the written constitution of the German Empire. The articles are taken up in order and their meaning and purport expounded; where differences of opinion exist, these are stated and argued. The presentation is clear and exhaustive so far as it goes.

The author displays on every page a thorough command of the subject. But the narrowness of the method is in some respects perhaps even more obvious than in other standard works. The German judiciary, for example, is not discussed because it rests upon a statutory and not a constitutional basis. On the other hand there are chapters on "The Tariff and Commercial Systems," "The Railway System," "Posts and Telegraphs," "The Marine and Shipping," and "The Consular System" simply because the imperial constitution contains articles upon these subjects. Few written constitutions are so well proportioned or display so clear and discriminating a knowledge of what should, and what should not, be included in a fundamental law as that of the United States. Yet even here the commentary upon the constitution, in which the instrument is taken up article by article and expounded, is somewhat old-fashioned. Germany's constitution is quite the opposite from ours. It reflects the practical state craft and constructive genius of a single great statesman, who was much less concerned about the proper proportions of the instrument, and whether it nicely included all that might be considered fundamental and as nicely excluded all else, as he was about getting in it those things which he deemed essential for the new state. Such a document really lends itself far less to the "commentary" form of treatment than does ours. A very considerable portion of our author's work is perforce not constitutional law but administrative law, yet this portion does not constitute a comprehensive treatment; it is merely fragmentary. There may still be a place for such a work; but it is evident that in pursuing unity and simplicity of form he has sacrificed unity of subject matter.

An American student in reading a work on German constitutional law notices a marked difference from American treatises in the nature of the sources upon which the author relies. The primary and principal agency for the solution of puzzling questions in American constitutional law has always been the Supreme Court, and it is in the decisions and opinions of that tribunal that the chief sources of the subject are to be found. Early text-writers in American constitutional law, and particularly Story, have contributed something, but for the most part the works of publicists have been little more than digests of decisions of courts. In Germany it is altogether different. Constitutional law there, like International law, rests in very large degree upon the works of eminent treatise writers. Such names as Laband, Georg Meyer, Von Rönne, Seydel fill the places which

with us are occupied by Marshall, Story, Taney, Waite and Brewer. The work under review has constant occasion to refer to the standard authoritative treatises, but its conclusions are also based in no small degree upon a very wide acquaintance with: (1) the debates in the constituent Reichstag; (2) more recent debates in the Reichstag; (3) statutes, ordinances and rules of procedure; (4) the dicta of eminent statesmen, particularly Bismarck and his successors in the chancellorship; (5) the analogous clauses in the Prussian constitution. Only very rarely is the practice in other countries referred to, and almost as seldom is a decision of a court cited.

On the moot questions in German constitutional law the author generally takes a moderate, safe position, which might be expected from the fact that he is not a university professor but a judge. Against the prevalent view among German writers, he maintains a doctrine of divided sovereignty. Sovereignty in the empire, he holds, is divided between Kaiser and Bundesrat. The work, while not reflecting great originality either in method or treatment, is a scholarly one and will doubtless prove of considerable service.

WALTER JAMES SHEPARD.

Traité de Droit Constitutionnel. By LEON DUGUIT, Professor de Droit a L'Université de Bordeaux. (Paris: Fontemoing and Company. Vol. I. Pp. 570; Vol. II, pp. 558. 1911).

This work is a revised and enlarged edition in two volumes of Professor Duguit's well-known "Manuel de Droit Constitutionnel" published in one volume several years ago. The first volume deals with the general theory of the state, its nature, functions, organs and agents, the second volume is devoted to the subjects of liberty and political organization, mainly in the French Republic. The new matter in Volume I consists principally of a chapter on "Public Agents," a discussion, thirty pages in length entitled "Le Corps des Citoyens" and a more extended treatment of the legislative function than is found in the "Manuel." The subject matter of Volume II has been changed by the omission of the chapter on "Law and the State" found in the "Manuel" and by the addition of a chapter, 164 pages in length, dealing with the subject of liberty, its nature, forms and guarantees.